United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-4257

United States Court of Appeals

FOR THE SECOND CIRCUIT

ESTATE OF HERMAN KLEIN, DECEASED, and BEBE KLEIN, MALCOLM B. KLEIN and IRA K. KLEIN, EXECUTORS, and BEBE KLEIN, Individually,

Appellants,

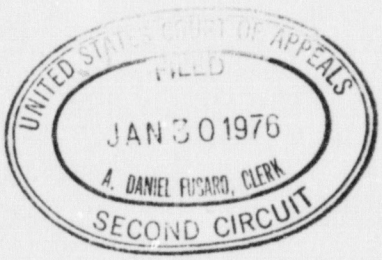
v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee.

On Appeal from a Decision of the United States Tax Court

APPELLANTS' BRIEF



MAYER, WEINER & LEVINSON
Henry Mayer
Paul M. Levinson
Attorneys for Appellants
19 West 44th Street
New York, N. Y. 10036
(212) MU 2-7003

TABLE OF CONTENTS

CITATIONS

STATUTES

I. ISSUE FOR REVIEW

WHETHER THE APPELLANT, BEBE KLEIN, IS ENTITLED TO TREATMENT AS AN "INNOCENT SPOUSE" UNDER §6013(e) OF THE INTERNAL REVENUE CODE OF 1954 AND IS THUS RELIEVED OF LIABILITY FOR THE TAX DEFICIENCY, INTEREST, PENALTIES AND OTHER AMOUNTS FOR THE YEAR 1955

II. STATEMENT OF THE CASE

In 1966, the Estate of Herman Klein and Bebe Klein, individually, had petitioned the United States Tax Court for a review of the tax deficiencies asserted against them for the years 1955-1958.

This is an appeal from a Decision and Opinion of the United States Tax Court finding that the taxpayer, Bebe Klein, was not an innocent spouse within the meaning of Section 6013(e) of the Internal Revenue Code of 1954 in the year 1955 and thus was not relieved of liability for the tax deficiency, interest and penalties for the year 1955.

The case was first referred to Commissioner Charles R. Johnston. The parties stipulated to all of the relevant facts and instead of holding a trial, the parties submitted their stipulation together with oral argument held on December 10, 1973 and briefs to the Commissioner. The stipulation of facts is reproduced in the Appendix of this appeal at pages 31-34. The report of Commissioner Johnston was filed on October 15, 1974 and ruled against the taxpayer, Bebe Klein.

In an Opinion filed on March 11, 1975, Judge Dawson of the United States Tax Court adopted the report of Commissioner Johnston with minor changes and also ruled against the taxpayer, Bebe Klein. The Decision and Order of Judge Dawson was filed October 6, 1975. It is the Opinion and Decision of Judge Dawson which the Appellants appeal from. The Opinion and Decision of Judge Dawson are reproduced in the Appendix to this appeal at pages 8-28. The Opinion is also cited at 63 TC No. 56.

III. STATEMENT OF THE FACTS

The following are the facts which the parties stipulated to before the United States Tax Court, which stipulation is reproduced in the Appendix at pages 31-34.

1. The petitioners are the Estate of Herman Klein, Deceased, Bebe Klein, Malcolm B. Klein and Ira K. Klein, Executors, and Bebe Klein, as surviving wife. The addresses of the above-named individuals at the time of the filing of the petition were as follows:

(a) Bebe Klein
201 East 83 Street
New York, N. Y.

(b) Malcolm B. Klein
31 Dorchester Street
Huntington Station, N. Y.

(c) Ira K. Klein
107 Jackson Place
Paramus, New Jersey

2. Herman Klein died on August 30, 1964.

3. The Surrogate's Court of New York County on October 19, 1964, granted letters testamentary on the Estate of Herman Klein to Bebe Klein, Malcolm B. Klein and Ira K. Klein, who duly qualified and are presently acting as Executors.

4. Herman Klein and Bebe Klein timely filed a joint return for the taxable year 1955 with the District Director of the then Upper Manhattan District, New York. Attached hereto and marked Exhibit 1-A is a copy of the petitioner's joint Federal income tax return for the taxable year 1955 (see Appendix pp. 35-43).

5. Herman Klein, during the year 1955, was engaged in the manufacture of dresses as a 30% partner in the partnerships of Miss Smart Frocks and C & S Dress Company, and as a stockholder in Miss Smart Frocks, Inc.

6. A partnership return, form 1065, for the taxable year beginning May 1, 1954 and ending April 29, 1955 of Miss Smart Frocks and C & S Dress Co., using the accrual method of accounting, was filed with the District Director of the then Upper Manhattan District, New York, New York. Attached hereto and marked Exhibit 2-B is a copy of Federal partnership return of Miss Smart Frocks and C & S Dress Co. for the taxable year ended April 29, 1955 (see Appendix pp. 44-54).

7. The following items were omitted from gross income on said joint return filed by Herman and Bebe Klein:

Dividend income	$21,994.29
Other income	5,200.00
Partnership income	18,495.74
Interest income	43.25
Total amount omitted from Gross Income	$45,733.28

8. The said joint tax return filed for the year 1955, shows the following items of gross income:

Interest	$ 191.21
Royalties	494.05
Partnership	90,845.89
Total	$91,531.15

9. For the year 1955 the amount omitted from gross income (paragraph 7 herein) totaling $45,733.28, exceeds 25% of the items of gross income shown in the return (paragraph 8 herein) totaling $91,531.15.

10. The parties agree that Bebe Klein meets the requirements of the Int. Rev. Code of 1954, § 6013(e)(1)(B) and (C).

11. For the year ending April 29, 1955, the partnership return of Miss Smart Frocks and C & S Dress Co., showed sales of $3,545,911.95; a schedule contained therein of C & S Dress Company for the same year showed gross income from contracting of $141,457.40.

12. The petitioners' 1955 joint tax return did not show therein the items described in paragraph 11.

13. For the year 1955, the amount omitted from gross income (paragraph 7 herein) totaling $45,733.28) does not exceed 25% of the sum of $1,106,896.07 which is composed of the following items:

Interest	$ 191.21
Royalties	494.05
Partnership (30% distributive share of the sales and contracting income of Miss Smart Frocks and C & S Dress Company	1,106,210.81
Total	$1,106,896.07

14. The parties agree that Bebe Klein is not liable for any addition to tax under the provisions of Int. Rev. Code of 1954, § 6653(b) for the taxable year 1955.

IV. ARGUMENT

A. Preliminary Statement

A spouse in order to obtain innocent spouse treatment must meet three requirements under §6013(e).* The parties have stipulated at Item 10 of the Stipulation of Facts that Bebe Klein meets two of these requirements. The requirement which the Appellants assert she meets and which the Appellee

*Section 6013(e) is reproduced in the Addendum to this brief.

asserts she does not meet is the requirement found at §6013(e)(1)(A) which requires that "there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25% of the amount of gross income stated in the return."

Taxpayers' position is that the amount omitted from gross income, $45,733.28 (Item 7 of the Stipulation of Facts), exceeds 25% of the amount of gross income that was reported on the 1955 joint tax return, $91,531.15 (paragraph 8, Stipulation of Facts) and hence taxpayer Bebe Klein is entitled to innocent spouse treatment, under §6013(e)(1)(A).

The Commissioner takes the position that the phrase "amount of gross income stated in the return" does not equal $91,531.15, but instead equals over 1 million dollars (paragraph 13 of the Stipulation of Facts), the amount of gross income reported on both the 1955 joint tax return and the 1955 partnership tax return. The Commissioner argues that since $45,733.28 is not 25% of this million dollar figure, the taxpayer, Bebe Klein, is not entitled to an innocent spouse treatment, under §6013(e)(1)(A).

The difference between the parties then boils down to what is meant by the phrase "amount of gross income stated in the return" found in §6013(e)(1)(A) against which the 25 percent must be taken. Is it the items of gross income reported only

in the joint return or is it these items plus the distributive share of the gross receipts of the partnership reported in the partnership return?

B. The Phrase "amount of gross income stated in the return" found in §6013(e)(1)(A) refers only to the total of the items of gross income which were actually reported in the joint return

The taxpayers believe that the phrase "amount of gross income stated in the return" refers only to the total of the items of gross income which were actually reported in the 1955 joint return, for the following reasons:

1. Section 6013 is entitled and only deals with "Joint returns of income tax by husband and wife." Section 6013(e)(1)(A) does not say that amount omitted from gross income must exceed 25% of gross income generally as defined in the internal revenue code. Rather it says that the amount omitted from gross income must exceed 25% of the amount of gross income stated in the return. The phrase "stated in the return" can only have reference to the amount of gross income the taxpayer actually puts down in the joint return. The phrase "stated in the return" thus qualifies the phrase "gross income" and limits it to items of gross income reported in the joint return. The Commissioner would read the phrase "stated in the return," as "stated in the returns." It is clear from a reading of §6013(e) that the only return contemplated in that section is only the joint tax return of individuals. Indeed, the very first

condition under §6013(e)(1)(A) which must be met is that "a joint return has been made..." This phrase is then followed by the language "gross income stated in the return." It is obvious that the "return" which is referred to in the phrase "gross income stated in the return" is the "joint return" mentioned in the prior phrase.

2. Appellants wish to call the following cases to the attention of the Court in connection with how a tax statute should be construed:

> Iselin v. United States, 270 U.S. 245,250-251:
> The statute was evidently drawn with care. Its language is plain and unambiguous. What the government asks is not a construction of a statute, but in effect an enlargement of it by the court, so that what was omitted, presumably by inadvertence, may be included within its scope. To supply omissions transcends the judicial function.
>
> Gould v. Gould, 245 U.S. 151, 153:
> In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the Government and in favor of the citizen.
>
> Helvering v. Bliss, 293 U.S. 144, 150-151:
> The exemption of income devoted to charity and the reduction of the rate of tax on capital gains were liberalizations of the law in the taxpayer's favor, were begotten from motives of public policy, and are not to be narrowly construed

Based on these cases and the clear unambiguous language of the section, the term "amount of gross income stated in the return" can only have reference to the amount of gross income the taxpayer actually reported in the joint return, $91,531.15.

The Commissioner takes the position that the phrase "gross income stated in the return" means gross income as defined in §6501(e)(1)(A), which is the six-year statute of limitations that gives the government the right to go back six years instead of the general rule of three years, if the taxpayer has omitted from his return an amount in excess of 25% of his gross income. If we use the definition of gross income under §6501(e)(1)(A), the 25% test is not met by the taxpayer Bebe Klein because gross income under §6501(e)(1)(A) and Regulation §301.6501(e)-1(a)(1)(ii) include gross receipts of the partnership. Gross income under §6501(e)(1)(A) would equal over a million dollars. See Item 13 of the Stipulation of Facts. The taxpayers assert the following reasons why the definition of the "amount of gross income stated in the return" under §6501(e)(1)(A) is not the proper definition for that phrase in §6013(e)(1)(A):

(a) Section 6013(e)(2)(B) specifically states that §6501(e)(1)(A) is to be consulted only with reference to computing "the amount omitted from gross income" (emphasis added). Nowhere in §6013(e) is there any reference to consulting §6501(e)(1)(A) for the purpose of determing "the amount of gross

income stated in the return." Thus, taxpayers view §6013(e)(2)(B) as only incorporating the adequate disclosure requirements under §6501(e)(1)(A) which determine whether an amount and how much of an amount has been omitted from gross income for the purposes of the six-year statute of limitations, but does not incorporate the rules under §6501(e)(1)(A) which relate to the computation of "the amount of gross income stated in the return." In other words, §6013(e)(2)(B) only tells us we must look to §6501(e)(1)(A) to determine how to compute the amount of the omission, not how to compute "the amount of gross income stated in the return."

(b) The legislative history of §6013(e) corroborates taxpayers' position that §6501(e)(1)(A) is to be consulted only for the limited purpose of computing the amount of the omission. Sen. Rep. 91-1537 states the following:

> The first requirement, that the amount omitted from gross income must equal more than 25% of the gross income shown on return is intended to limit the relief provided in the bill to those cases where the income omitted represents a significant amount relevant to the income reported. Whether or not an omission meets this test is to be determined in a manner similar to the test applied under existing law in determining, for purposes of the six-year statute of limitations, whether an omission in excess of 25% of gross income exists. (emphasis added)

(c) The first sentence of the Senate Report above quoted sheds light on what is meant by the phrase "stated in the return." In the first sentence the phrase "gross income shown in the return" and "reported income" are used synonomously and are the obvious precursors of the phrase "gross income stated in the return." Obviously, the phrase "gross income stated in the return" according to this Senate Report, means what the taxpayer actually "reported" or has "shown" on his tax return as gross income.

(d) The taxpayers' position that §6501(e)(1)(A) should not be consulted to determine the meaning of the phrase "the amount of gross income stated in the return," makes good sense when we consider the policy behind §6501(e) and the completely different policy behind §6013(e). As already stated, §6501(a) is the general rule that the Internal Revenue Service has three years within which to make an assessment. This is the general three year statute of limitations. Section 6501(e) is an exception to this rule and allows the IRS to go back six years if there is a significant omission of at least 25% of gross income. The rules under §6501(e), specifically §6501(e)(1)(A), and Regulation §301.6501(e) - 1(a)(1)(ii), define the term "gross income stated in the return" to include gross receipts of a trade or business. Obviously, this has the effect in situations where the taxpayer owns a business with sub-

stantial receipts, of reducing the government's chances of going back six years, because by increasing the gross income figure to include gross receipts of the business instead of the smaller figure of gross income actually reported on the return, the chances of the omission equalling 25% of that figure is reduced.

But §6013(e) was passed as an ameliatory provision to provide relief for an innocent spouse. By using the same gross receipts test found under the six year statute of limitations for the innocent spouse provisions, the chances of an innocent spouse whose husband is a partner in a business with large gross receipts and comparatively small net income being able to show that the omission equalled 25% of that inflated gross receipts figure, which includes partnership gross receipts, rather than the smaller figure of gross income actually reported on the joint return, become severely reduced. Using the gross receipts test under the six year statute of limitations to make it more difficult for the government to go back six years instead of three years makes sense, but using the gross receipts test to make it more difficult for an innocent spouse to obtain innocent spouse treatment makes no sense since the innocent spouse provisions of the Internal Revenue Code were enacted as ameliatory provisions. Thus, it is incongruous for Congress with one hand to enact the innocent spouse defense, and then with the other hand to take the defense away by incorporating the gross receipts test under §6501(e) for purposes of the definition of "the amount of gross income stated in the return".

(e) If §6013(e)(2)(B) required that §6501(e)(1)(A) be consulted for the purpose of computing "the amount of gross income stated in the return", Congress could have worded §6013(e)(2)(B) as follows:

> (B) The amount omitted from gross income and the gross income stated in the return shall be determined in the manner provided by §6501(e)(1)(A).

The words "and the gross income stated in the return" underlined in the above quotation do not actually appear in §6013(e)(2)(B). Thus, the Commissioner is seeking a construction of §6013(e)(2)(B) as though it contained a certain reference to §6501(e)(1)(A) which it does not in fact contain. In this connection Iselin, supra, Gould, supra, Bliss, supra, hold that it is not the function of the courts to supply language which Congress might have, but did not incorporate into a tax statute.

(f) If the gross receipts test found in the six year statute of limitations §6501(e) is used to determine "the amount of gross income stated in the return", then there would be established a classification of otherwise innocent spouse whose guilty spouse happened to be a partner in a business which had substantial gross receipts and comparatively small net income. To make unavailable the relief provisions of the Innocent Spouse section for this

category of otherwise innocent spouse by applying a gross receipts test is an arbitrary, capricious, unreasonable and unfair classification, and hency violates due process of law under the Fifth Amendment to the United States Constitution. The taxpayers do not argue that §6013(e) is unconstitutional per se. Rather, taxpayers view that section as interpreted and applied by the Commissioner through the use of the gross receipts test as unconstitutional.

Taxpayers view the gross receipts test as setting up an arbitrary, capricious, unreasonable and unfair classification because an otherwise innocent spouse may be married to a guilty spouse, who was a partner in a partnership that had substantial gross receipts, but with little or no net income or relatively little net income in comparison with the gross receipts of the business. Such an otherwise innocent spouse under the gross receipts test would be unable to obtain relief under the Innocent Spouse provisions of §6013(e). Hence, the gross receipts test is wholly unrelated to the economic reality of the taxpayer's situation and to use this test as a basis for establishing a classification is arbitrary, capricious, unreasonable and unfair. This is exactly what happened in the case at bar. The gross receipts of the partnership were over a million dollars (Stipulation, Item 13), whereas the net income of the taxpayer's husband from the partnership was $109,341.63 (Stipulation, Items 7 and 8). Thus, taxpayer Bebe Klein falls into

the class of otherwise innocent spouse who happened to have the misfortune of being married to a guilty spouse who was a partner in a partnership with substantial gross receipts, but with relatively little net income in comparison.

Taxpayers wish to call the following cases to the attention of the Court in connection with this issue of the constitutionality of a tax statute:

Heiner v. Donnan, 285 U.S. 312, 326:

> That a federal statute passed under the taxing power may be so arbitrary and capricious as to cause it to fall before the due process of law clause of the Fifth Amendment, is settled.

Brushaber v. Union Pacific Railroad Company, 240 U.S. 1, 24-25:

> ...the act complained of was so arbitrary as to constrain to the conclusion that it was not the exertion of taxation but a confiscation of property, that is, a taking of the same in violation of the Fifth Amendment, or, what is equivalent thereto, was so wanting in basis for classification as to produce such a gross and patent inequality as to inevitably lead to the same conclusion...

Moritz v. Commissioner, 469 F.2d 466, 10th Cir. (1972).

This case held that the taxpayer was entitled to a deduction for expenses in 1968 for the care of his dependent invalid mother, notwithstanding the government's argument that the deduction was unavailable because he was a single man who was never married, the deduction being limited under §214 IRC to a woman, a widower or divorcee, or a husband whose wife is incapacitated or institutionalized. The Court at p. 470 said the following:

> We conclude that the classification is an invidious discrimination and invalid under due process principles. It is not one having a fair and substantial relation to the object of the legislation dealing with the amelioration of burdens on the taxpayer. (See Reed v. Reed, supra, 404 U.S. at 76, 96 S.C. 251....
>
> .... We conclude that the challenged provision in §214 is invalid and should be denied application, and that the benefit of the deduction generally provided by the statute should be extended to the taxpayer.

Reed v. Reed, 404 U.S. 71, 76:

> A classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similar circumstanced shall be treated alike." Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

The classification which Bebe Klein has been placed in, just as the taxpayer in the Moritz case, does not have a "fair and substantial relation to the object of the legislation dealing with the amelioration of burdens on the taxpayer."

Finally, there are two portions of the Opinion of Judge Dawson which taxpayers wish to specifically single out for reply.

Judge Dawson reasoned that §6013(e)(2)(B) would be rendered "meaningless" if taxpayers' construction of the phrase "amount of gross income stated in the return" found in §6013(e)(1)(A) were adopted (see Appenix p. 16).

Taxpayers' Reply: Under taxpayers' construction, Section 6013(e)(2)(B) is not rendered "meaningless," rather its meaning is that Section 6013(e)(2)(B) refers to Section 6501(e)(1)(A) only for the limited purpose of determining how to compute the omission and not how to also compute the "amount of gross income stated in the return."

The plain language of Section 6013(e)(2)(B) states:

> "The amount omitted from gross income shall be determined in the manner provided by Section 6501(e)(1)(A)" (emphasis added).

Section 6013(e)(2)(B) does not state:

> "The amount omitted from gross income and the amount of gross income stated in the return shall be determined in the manner provided by Section 6501(e)(1)(A)" (emphasis added).

Thus, under taxpayers' construction, Section 6013(e)(2)(B) is only given the plain meaning which its very words indicate.

Judge Dawson also reasoned that:

> "We fail to see how a computation can be made under Section 6501(e)(1)(A) of the amount of gross income omitted from a return without a simultaneous determination of the amount of gross income stated in the return." (Appendix pp. 17-18)

Taxpayers' Reply: The Commissioner as well as the taxpayers made the computation of the "amount of gross income omitted from a return" independently of the determination of the "amount of gross income stated in the return" by simply adding up all the

items omitted, see Stipulation of Fact, paragraph 7. Obviously, the computation of the "amount of gross income omitted from a return" is not inexorably intertwined nor must it be made simultaneously with the computation of the "amount of gross income stated in the return."

V. CONCLUSION

Based upon all of the foregoing, it is respectfully concluded that taxpayer Bebe Klein was an innocent spouse within the meaning of Section 6013(e) of the Internal Revenue Code of 1954 in the year 1955 and thus was relieved of liability for the tax deficiency, interest and penalties for the year 1955.

VI. ADDENDUM

Sec. 6013. Joint returns of income tax by husand and wife.

* * * *

(e) Spouse relieved of liability in certain cases.

(1) In general.--Under regulations prescribed by the Secretary or his delegate, if--

(A) a joint return has been made under this section for a taxable year and on such return there was omitted from gross income an amount properly includable therein which is attributable to one spouse and which is in excess of 25 percent of the amount of gross income stated in the return.

(B) the other spouse establishes that in signing the return he or she did not know of, and had no reason to know of, such omission, and

(C) taking into account whether or not the other spouse significantly benefited directly or indirectly from the items omitted from gross income and taking into account all other facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for such taxable year attributable to such omission.

then the other spouse shall be relieved of liability for tax (including interest, penalties, and other amounts) for such taxable year to the extent that such liability is attributable to such omission from gross income.

(2) Special rules.--For purposes of paragraph (1)--

(A) the determination of the spouse to whom items of gross income (other than gross income from property) are attributable shall be made without regard to community property laws, and

(B) the amount omitted from gross income shall be determined in the manner provided by section 6501(e)(1)(A).

Sec. 6501. Limitations on assessment and collection.

* * * *

(e) Substantial omission of items.

Except as otherwise provided in subsection (c)--

(1) Income taxes. In the case of any tax imposed by subtitle A--

(A) General rule. If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this sub-paragraph--

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services; and

(ii) In determining the amount omitted from gross income, there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary or his delegate of the nature and amount of such item.

§301.6501(e)-1 Omission from return.

(a) Income taxes--(1) General rule. (i) If the taxpayer omits from the gross income stated in the return of a tax imposed by subtitle A of the Code an amount properly includible therein which is in excess of 25 percent of the gross income so stated, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(ii) For purposes of this subparagraph, the term "gross income", as it relates to a trade or business, means the total of the amounts received or accrued from the sale of goods or services, to the extent required to be shown on the return, without reduction for the cost of such sales or services. An item shall not be considered as omitted from gross income if information, sufficient to apprise the district director of the nature and amount of such item, is disclosed in the return or in any schedule or statement attached to the return.

United States Court of Appeals
For The Second Circuit

Estate of Herman Klein, Deceased, and Bebe Klein, Malcolm B. Klein and Ira K. Klein, Executors and Bebe Klein, Individually,

CERTIFICATION OF SERVICE

Appellants,

v.

Commissioner of Internal Revenue,

Appellee

The undersigned, Paul M. Levinson, hereby certifies that on Friday, January 30, 1976, he served two copies of the Appellants' brief and ~~one~~ Two copies of the Appendix upon Scott P. Crampton, Assistant Attorney General, Tax Division, United States Department of Justice, Washington, D. C. 20530, by depositing true copies of same enclosed in a postpaid properly addressed wrapper in - a post office - official depository under the exclusive care and custody of the United States Postal Service within the State of New York.

By: _____
Paul M. Levinson

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a

duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

MAYER, WEINER & MAYER

Attorneys for

Office and Post Office Address

19 West 44th Street

Borough of Manhattan **New York, N. Y. 10036**

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19

at M.

Dated,

Yours, etc.,

MAYER, WEINER & MAYER

Attorneys for

Office and Post Office Address

19 West 44th Street

Borough of Manhattan **New York, N. Y. 10036**

To

Attorney(s) for

Index No. Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ESTATE OF HERMAN KLEIN, DECEASED, AND BEBE KLEIN, MALCOLM B. KLEIN AND IRA K. KLEIN, EXECUTORS AND BEBE KLEIN, INDIVIDUALLY,

Appellants,

v.

COMMISSIONER OF INTERNAL REVENUE,

Appellee

CERTIFICATION OF SERVICE

MAYER, WEINER & MAYER

Attorneys for

Office and Post Office Address, Telephone

19 West 44th Street

Borough of Manhattan **New York, N. Y. 10036**

682-7003

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for